
(2018) 12 JH CK 0020

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 809 Of 2018

Madho Mahto And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 08-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Citation : (2018) 12 JH CK 0020

Hon'ble Judges : Ratnaker Bhengra, J;H.C. Mishra, J

Bench : Division Bench

Advocate : Salil Sitanshu, Abhay Kumar Tiwari,

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellants and learned counsel for the State.
2. The appellants are aggrieved by the impugned Judgment of conviction and Order of sentence dated 29.02.2012, passed by the learned Sessions Judge, Simdega, in Sessions Trial No. 149 of 2008, whereby, these appellants have been found guilty and convicted for the offence under sections 302 / 34 of the Indian Penal Code. Upon hearing on the point of sentence, the appellants have been sentenced to undergo R.I. for life with a fine of Rs. 10,000/- each, for the said offence.
3. The prosecution case was instituted on the basis of the fardbeyan of the informant Dubraj Mahto, the son of the deceased Temchu Mahto, recorded at the place of occurrence, in village Girda Pahantoli, P.S. - Bano, District- Simdega, on 30.04.2008 at about 7:30 A.M., in the morning, wherein he has stated that on the previous day, i.e. on 29.04.2008, his father Temchu Mahto had gone to the Girda Market, but he did not return back till night. In the morning on 30.04.2008 at about 7:00 A.M., the informant was informed that the dead body of his father was lying near the field, whereupon the informant along with his elder brother went there and found the dead body of his father, with injuries caused by sharp

cutting weapon.

Several persons had assembled there. He has stated that his mother was not present in the village and she had gone to her maternal uncle's place in a marriage. He was also informed that his father was seen going in the night at about 8:00 P.M. Police arrived at the place of occurrence, where the fardbeyan of the informant was recorded, in which the informant claimed that some unknown persons had committed the murder of his father, while he was returning back from the market. On the basis of the fardbeyan of the informant, Bano (Girda O.P.) P.S. Case No. 19 of 2008, corresponding to G.R. Case No. 142 of 2008, was instituted for the offence under Section 302 of the Indian Penal Code, against unknown and investigation was taken up. After investigation, the police submitted the charge-sheet against these three accused persons.

4. After commitment of the case to the Court of Session, charge was framed against all the three accused persons for the offence under sections 302 / 34 of the Indian Penal Code, and upon the accuseds' pleading not guilty and claiming to be tried, they were put to trial.

5. In course of trial, seven witnesses have been examined by the prosecution. The Doctor conducting the post-mortem examination on the dead body of the deceased has not been examined in the case, and the post-mortem report has been proved by the I.O., P.W.-3 Ram Narayan Sinha which was marked as Ext.-7.

6. Out of the material witnesses examined, P.W.-1 Chattan Mahto has turned hostile and has not supported the prosecution case at all. P.W.-2 Ravi Kant Sahu has only stated that the accused Madho Mahto was apprehended and interrogated by the police. He has stated that he had no knowledge about the occurrence. P.W.-4 Jasmaiti Devi has stated that about one year and three months ago, on a Tuesday night, she was sleeping in her house, as her husband had gone away. Someone knocked the door, but she did not open the door, but from the gaps in the door she saw three persons, and one of them was accused Madho Mahto. They were searching her husband. On the next morning, she was informed that the deceased Temchu Mahto had been murdered. She has identified the accused Madho Mahto in the Court. The evidence of this witness also is of no help to the prosecution, as this witness is not the wife of the deceased.

7. P.W.-5 is Korhi Baraik, who had only stated that at about one year and three months ago in a Tuesday evening at about 7:00 P.M., he had gone to answer the call of nature, when he saw the accused Madho Mahto, Hira Mahto and Basu Mahto they were shouting with someone, and thereafter he returned back to his house. In the next morning, he found Temchu Mahto dead at the same place. He has also stated that when he had seen the accused Madho Mahto, he was armed with balua. As such, even the evidence of this witness, on its own, is of no help to the prosecution, as he had not seen the accused persons assaulting the deceased.

8. P.W.-6 Jirmaith Devi is the wife of the deceased. She has stated that her husband was murdered by these three accused persons, while he was returning from the market. She has identified the accused persons in the Court. In her cross-examination, she has admitted that at the time of occurrence she was not present in the village, rather she had gone to her maternal uncle's place in a marriage, which was in the State of Orissa. She has also stated in her cross-examination that when she returned back, her sons informed her about the occurrence.

9. P.W.-7 Dub Raj Mahto is the informant and the son of the deceased. He has stated that the occurrence had taken place on 29.04.2008. He was returning back from market along with his father at about 7.30 P.M. He was about 200 meters behind his father, when he saw that the accused persons Madho Mahto, Basu Mahto and Hira Mahto assaulted his father by balua and committed his murder. He ran away out of fear and informed the villagers in the morning. He has stated that he gave the fardbeyan to the police near the dead body of his father, whereupon he had put his signature, which he has proved, and the same was marked Ext.-9. He has stated that he had not stated these facts while giving his fardbeyan and he had not stated the names of the accused persons in his fardbeyan.

10. P.W.-3 is Ram Narayan Sinha, who is the I.O. of the case. Apart from proving the necessary documents, such as the fardbeyan, formal FIR, inquest report etc., his evidence shows that he was secretly informed by a person, whose name has not been disclosed by him, that the accused persons were intending to commit the murder and on that information, he arrested all the three accused persons on different dates. He recorded the confessional statements of the accused persons and he has proved the confessional statements as Ext.-6 series. He got the post-mortem report which he also proved and the same was marked as Ext.-7, and after completing the investigation, he submitted the charge sheet. The evidence of this witness clearly shows that the confessional statements of the accused persons had not led to any recovery.

11. Learned counsel for the appellant has submitted that the impugned Judgement of conviction and Order of sentence passed by the learned Trial Court below cannot be sustained in the eyes of law, inasmuch as there is no cogent evidence on record to convict these appellants for the offence charged.

12. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that the informant has supported the prosecution case as eye witness to the occurrence.

13. Having heard learned counsels for both the sides and upon going through the evidence on record, we find that I.O. has been examined as P.W.-3 in the case, whereas, other material witnesses, namely, P.W.-4 Jasmaiti Devi, P.W.-5 Korhi Baraik, P.W.-6 Jirmaith Devi, the wife of the deceased and P.W.-7 Dub Raj Mahto, the informant and the son of the deceased, have been examined after the I.O.

Though there are statements of these witnesses which are against the statements given by them before the police, but the defence did not get any change to cross-examine the I.O. on this point, as the I.O. was not recalled. We find from the record that P.W.-7 Dub Raj Mahto, the informant has supported the case as eye witness to the occurrence, but he was not at all the eye witness, as is apparent from the FIR itself, as the FIR was lodged against unknown on his own statement, but he has made improvements over his statements given before the police, stating that he had seen the accused persons committing the murder. His evidence is thus, not reliable at all. Similarly, P.W.-4 Jasmaiti Devi, wife of the deceased has also stated that these accused persons had committed the murder of her husband, but it is an admitted fact even in the fardbeyan of the informant, as also in her cross examination, that she was not present in the village and she had gone to her maternal uncle's place in some marriage, which was in the State of Orissa. As such, her statement also cannot be relied upon. P.W.-5 Korhi Baraik has stated that he had gone to answer the call of nature where he found these accused persons shouting with someone and on the next morning, he found the dead body of the deceased. He has not stated that he had seen the accused persons assaulting the deceased. In the interest of justice, we have also looked into the case diary, which shows that he had given a different statement before the police. Thus, except the confessional statements of these accused persons, which have been proved by the I.O., as Ext.-6 Series, there is nothing on the record against the accused persons. These confessional statements admittedly, have not led to any recovery, and as such, could not be taken into evidence. As such, we find no material on record, on the basis of which these three accused persons could be convicted and sentenced for the offence charged, and the impugned Judgement of conviction and Order of sentence passed by the Trial Court below cannot be sustained in the eyes of law.

14. For the foregoing reasons, the impugned Judgment of conviction and Order of sentence dated 29.02.2012, passed by the learned Sessions Judge, Simdega, in Sessions Trial No. 149 of 2008, convicting and sentencing the appellants, Madho Mahto, Basu Mahto and Hira Mahto, for the offence under sections 302 / 34 of the Indian Penal Code, are hereby, set aside. All the three appellants are found not guilty and are acquitted of the charge. All these three appellants are in custody undergoing the sentence. They are directed to be released and set at liberty forthwith, if their detentions are not required in any other case.

15. This appeal is accordingly allowed. Let a copy of this Judgement be sent to the Court concerned forthwith.